

TESTIMONY OF
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before the
HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS
Regarding
THE VISA WAIVER PILOT PROGRAM

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Mr. Chairman and Members of the Subcommittee, I welcome the opportunity to testify on the Visa Waiver Pilot Program (VWPP). During the last nine years, this Program has become a regular part of the inspection and admission process for visitors from 25 countries.

Development and Expansion of the Visa Waiver Pilot Program.

The Visa Waiver Pilot Program was established by the Immigration Reform and Control Act of 1986. Under its provisions, visitors for pleasure or business from countries designated jointly by the Attorney General and the Secretary of State, who meet express statutory criteria, may enter the United States without visa for a period of ninety days. They are required to waive in writing any right to the review of an immigration officer's determination that they are inadmissible or removable from the United States. They may only contest removal based on an application for asylum. They are also required, if arriving by air or sea, to travel on a transportation line which is signatory to an agreement with the Immigration and Naturalization Service permitting the line to transport passengers under the Program, and they are required to be in possession of a round-trip or onward ticket.

The four criteria for inclusion of countries in the program are:

- 1.that they offer reciprocal privileges to United States citizens;
- 2.that they have had a nonimmigrant visitor visa refusal rate of under 2 percent for the previous two years and under 2.5 percent for any one of these two years;
- 3.that they certify that they issue or are in the process of developing a machine-readable passport; and
- 4.that the Attorney General make a determination that inclusion of the country in the Program does not pose a law enforcement risk to the United States.

The Act further provides that the Attorney General, in consultation with the Secretary of State, may refrain from including countries in the Program or remove them for any reason, including national security.

Applicants for admission under the program must complete a Form I-94W, answering questions regarding their admissibility to the United States and executing the waiver noted above. They are examined by immigration officers who are aware that these individuals have not been screened through a visa process.

The officers check the names of these applicants against a lookout database. These officers may open and pursue any appropriate line of inquiry to make a determination concerning the individual's admissibility.

From its inception in 1988 through fiscal year 1996, the Program grew from one to 25 participating countries. In Fiscal Year 1996, seventy-six percent of nonimmigrants from participating countries entered under this program. This was over 12 million travelers, or just under one-half of all documented nonimmigrants.

Prior to the statutory modifications made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the agencies involved in making the necessary determinations for addition of countries to the program had developed a process for the inclusion of countries. The Bureau of Consular Affairs of the Department of State makes the necessary threshold determinations of eligibility, i.e., that the visa refusal rates are within the statutory criteria; that the country is issuing or intends to issue a machine readable passport; and that the country extends or will extend reciprocal privileges to U.S. travelers. Before making a recommendation that a country be included in the Program, the Bureau of Consular Affairs considers any other relevant foreign relations or national security issues. Upon receipt of a recommendation from the Department of State that a country be included in the Program, the Department of Justice requests information from the Immigration and Naturalization Service and the Federal Bureau of Investigation concerning immigration, criminal, and national security considerations and data. As necessary, a team may be dispatched to the country to consult with its law enforcement and criminal justice organizations and to review such activities as border control and passport issuance procedures. Upon analysis of this information, a recommendation is made to the Attorney General as to inclusion or rejection of the country. Under IIRIRA, the authority to designate a country to participate in the Program was vested solely in the Attorney General, in consultation with the Secretary of State.

The number of persons applying for admission under the Visa Waiver Pilot Program who are refused entry grew, through Fiscal Year 1994, in a manner consistent with the growth of the Program, from 22 persons in 1988 to 1,876 persons in 1994. This number increased significantly in Fiscal Years 1995 and 1996, by approximately 2,000 persons a year, to 7,011 refusals in 1996. This recent increase appears attributable in part to the fraudulent use of travel documents from countries in the Program, which will be discussed below. However, statistics relating to the apprehension and removal of nationals of Visa Waiver countries, as shown on the attached chart, indicate that these countries remain low-risk for immigration law violations.

The Success of the Visa Waiver Pilot Program.

The Visa Waiver Pilot Program has grown tremendously and has proven extremely popular with nationals of visa waiver countries and with travel and tourism interests. It has significantly reduced consular workload but has not markedly degraded facilitation at United States ports-of-entry. Port-of-entry enforcement capabilities have been enhanced by the addition of select data from the Consular Lookout and Support System (CLASS) to the Interagency Border Inspection System (IBIS) database.

Fraud in the Visa Waiver Pilot Program.

The Visa Waiver Pilot Program is attractive to the prospective illegal entrant in the same way it is for the legitimate traveler -- entry to the United States can be achieved with nothing but a passport and without the necessity of visa issuance.. Consequently fraudulent document vendors and alien smugglers have targeted the passports of Visa Waiver countries. As the Department of State has increased the fraud resistance of the United States nonimmigrant visa by including biographical information and the bearer's digitized photograph in the visa, the attractiveness of using VWPP passports for non-VWPP nationals seeking to enter the United States illegally has also increased. The attraction of smugglers to VWPP passports is encouraged by several factors, including limited security features present in some VWPP passports (which simplify the alteration and forgery of them) and the existence of multiple passport-issuing authorities and procedures in some VWPP countries.

The use of lost or stolen blank VWPP passports presents a serious fraud concern. There is also a large supply of stolen blank VWPP passports on the market today. INS Intelligence has received reports dealing with the increasing involvement of international organized crime groups in the theft of these documents and their vending to smuggling rings or individual aliens.

The INS Intelligence Program collects information about the universe of fraudulent document efforts. It distributes to the field intelligence reports on the variety of documents and schemes in use to move aliens to the U.S. and to attempt to get through the inspections process. The Forensic Documents Laboratory sends to all ports of entry "Alerts" whenever a significant new fraudulent document appears. These Alerts include color photographs of the fraudulently produced or altered documents or the fraudulent visa stamps as well as written description of what features to look for to determine the fraud. In this manner, fraudulent documents uncovered by one inspector or by a consular officer or government official overseas become known to INS inspectors at all ports of entry.

To ensure compliance with the terms of the Program, INS has worked with the airline industry to develop criteria for the use of electronic ticketing on international flights to the United States. Under recent direction from INS Headquarters, visa waiver applicants may use electronic tickets provided that they can, upon demand, present some proof of onward travel arrangements and provided that, also upon demand, participating transportation lines cooperate with INS requests for verification of travel arrangements.

Administration Review of the Visa Waiver Pilot Program.

The Department of Justice has been conducting a review of the Visa Waiver Pilot Program to assess the risks associated with further expansion of the Program, including incremental effects of program expansion on the effectiveness of ports-of-entry. That review is being expanded to an interagency working group which will evaluate the Program as a whole, its extension, whether it should be made permanent, the continued designation of current countries, and criteria to be applied to determinations about the addition of further countries to the Program.

Nonimmigrant Information System and Visa Overstay Rates.

The Program provides that one qualification for continued participation is that the number of nationals of a member country who were denied admission at the time of arrival or withdrew their application for admission, and the number of nationals of that country who violated the terms of such admission during the previous fiscal year remain below 2 percent of the total number of nationals of that country who applied for admission as nonimmigrant visitors during such previous fiscal year.

Data are collected in the Nonimmigrant Information System (NIIS) on the number of withdrawals for VWPP countries, and can be provided for each year since the beginning of the program (1988). Similarly, comprehensive data on VWPP refusals can be provided.

Data are available in NIIS from 1988-89 and 1991-92 for VWPP countries whose nationals violated their terms of admission (as measured by nonimmigrant visa overstay rates). These data are estimates of overstay rates which are based on "apparent overstay" numbers from NIIS. INS developed a methodology that reduces the number of apparent overstays by an estimate of the "system error." The system error (historically about 8-10 percent for all countries) begins with the failure of many aliens departing the United States to turn in their departure forms to their carriers or as they depart across the land borders. Other sources of system error are keypunching and processing problems. This methodology was refined as a result of review by the General Accounting Office in 1995.

Nonimmigrant overstay rates have not been estimated since July 1994 (when calculation of fiscal year 1993 rates were attempted) due to inconsistent numbers of apparent overstays in NIIS. Because of the magnitude and variation of apparent overstays since 1992, the INS' established methodology cannot currently be used to produce overstay rates with the required level of reliability to make relative comparisons among countries. The numbers of apparent overstays have been reviewed every 6 months through February 1997

in attempts to estimate defensible nonimmigrant overstay rates; however, data from NIIS continue to be inadequate for this purpose.

From the 1994 realization that corrective action was required, plans were made to rewrite the NIIS software to improve data integrity, identify new requirements and convert the old database. This development effort began in 1995 and continued until the new system was introduced in July 1996. Operation of the new system was encumbered by the process of converting the old database of admissions, withdrawals, and departures from 1983 through June 1996. Backlogs caused by the necessity of maintaining dual processing were not eliminated until May 1997.

INS recognizes the inability to provide this information as a serious deficiency. We hope to have completed and introduced corrective actions to the NIIS by the early 1998.

INS is presently engaged in extensive efforts related to the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 which deal with automation, card technology, biometrics, and departure management. This work will result in significant improvement in INS's ability to track arrivals and departures, identify overstays, and generate more precise overstay statistics.

Recommendations.

As Congress considers extension of the VWPP, INS has several recommendations. As we have stated in the past, INS recommends that legislation be enacted to require Visa Waiver Pilot Program countries to introduce highly fraud-resistant, machine-readable passports by a date certain. Current language does not refer to fraud resistance and some countries have failed to introduce machine-readable documents to date. It should be noted that the initial eight VWPP countries entered the program before this requirement was introduced by the Immigration Act of 1990.

The provisions requiring transportation lines to be signatory to agreements with INS and requiring air and sea passengers to be in possession of onward tickets have posed some difficulties in relation to private and military conveyances. Individuals familiar with other countries' less regulated visa waiver schemes seldom focus on the noted U.S. requirements. It may be appropriate to review the Program provisions with the aim of accommodating private and military conveyances.

This completes my testimony. I would be glad to respond to any questions you may have.